



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

ADVANCE COPY BY FASCMILE

FEB 23 2005

Cleta Mitchell, Esq.
Foley & Lardner
Washington Harbour
3000 K Street, N.W., Suite 500
Washington, DC 20007-5143

RE: MUR 5020
Gormley for Senate Primary Election Fund
and Alan C. Staller, as treasurer

Dear Ms. Mitchell:

On February 9, 2005, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Delbert K. Rigsby".

Delbert K. Rigsby
Attorney

Enclosure
Conciliation Agreement

ES-04-410-1743

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BEFORE THE FEDERAL ELECTION COMMISSION

2005 FEB 17 A 11:27

In the Matter of

Gormley for Senate Primary Election
Fund and Alan C. Staller, as treasurer

MUR 5020

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Audrey L. Michael. The Federal Election Commission ("Commission") found reason to believe that Gormley for Senate Primary Election Fund and Alan C. Staller, as treasurer ("Respondent" or "Committee") violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a).¹

NOW, THEREFORE, the Commission and the Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(5)(A)(i) and 11 C.F.R. § 111.18(d).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

¹ All of the facts recounted in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Federal Election Campaign Act of 1971, as amended ("the Act"), are prior to the effective date of BCRA and all citations to the Commission's regulations are to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

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Actors

1. Gormley for Senate Primary Election Fund is a political committee within the meaning of 2 U.S.C. § 431(4), and was William L. Gormley's authorized political committee for the Republican nomination for the United States Senate in New Jersey in 2000. Alan C. Staller is treasurer of the Committee.

2. Atlantic City Showboat, Inc. ("Showboat") is a corporation within the meaning of 2 U.S.C. § 441b(a). Marina Associates ("Marina") is a partnership of two corporations within the meaning of 2 U.S.C. § 441b(a), Harrah's Atlantic City, Inc. and Harrah's New Jersey, Inc.

3. Herbert Wolfe, from 1994 until 2001, was General Manager of Showboat. General Manager is the top executive position at Showboat.

4. David Jonas is General Manager of Marina. General Manager is the top executive position at Marina.

5. Mirage Resorts, Inc. ("Mirage") is a corporation within the meaning of 2 U.S.C. § 441b(a).

6. *Le Cirque* is a luxury restaurant that leases space in the Bellagio and is an independent company from Mirage. The Bellagio is a subsidiary of Mirage.

7. Steve Wynn was, at all relevant times, Chief Executive Officer and Chairman at Mirage.

8. Bruce Aguilera is Vice President and General Counsel at Bellagio.

9. Punam Mathur is Senior Vice President of Corporate Diversity and Community Affairs at MGM Mirage, Inc., and the former Director of Government and Community Relations at Mirage.

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10. Joseph R. Jingoli, Jr. is President of Jingoli Construction, Inc., located in Lawrenceville, New Jersey, and is an acquaintance of Gormley.

Applicable Law

11. The Act provides that a corporation is prohibited from making a “contribution” of money or anything of value or expenditure in connection with any election for federal office. 2 U.S.C. § 441b(a). A “contribution” includes any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value to any candidate or campaign committee, in connection with a federal election. 2 U.S.C. § 441b(b)(2).

12. Corporations (including officers, directors or other representatives acting as agents for the corporation) are also prohibited from “facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations.” 11 C.F.R. § 114.2(f).

13. Generally, communications by a corporation to its executives or administrative personnel are not considered contributions. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. § 114.1(c). However, if the activity goes beyond communications to “facilitating the making of a contribution,” it becomes a prohibited contribution by the corporation or its officers or directors because the corporation has provided something of value to that candidate or campaign committee. 11 C.F.R. § 114.2(f)(1).

14. Facilitation means “using corporate . . . resources or facilities to engage in fundraising activities in connection with any Federal election.” 11 C.F.R. §§ 114.2(f)(1)-(2). Facilitation includes directing staff to plan, organize, or carry out a fundraising project as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services; using a corporate list of customers, clients,

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vendors or others who are not in the restricted class to solicit contributions or distribute invitations to the fundraiser; providing catering services operated or obtained by the corporation unless the corporation receives advance payment for the fair market value of the services; and using corporate resources and providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items. 11 C.F.R. §§ 114.2(f)(2)(i)-(ii). The “collection of contributions by any officer, director or other representative of the corporation . . . is an example of a prohibited facilitation of contributions under 11 C.F.R. § 114.2(f).”

11 C.F.R. § 114.4(c)(2)(iii); *see* AOs 1987-29 and 1986-4.

15. Exceptions to the general prohibition against corporate facilitation of contributions include soliciting contributions to be sent directly to candidates if the solicitation is directed to the corporation’s restricted class or soliciting contributions which are to be collected and forwarded by the corporation’s separate segregated fund in accordance with 11 C.F.R. § 110.6. 11 C.F.R. §§ 114.2(f)(3)(ii) and 114.2(f)(4)(ii); *see* 11 C.F.R. § 114.1(a)(2)(i).

16. The Act also makes it unlawful for any person to make contributions to any candidate and his authorized political committee regarding any election for Federal office, which, in the aggregate, exceeds \$1,000 per election. 2 U.S.C. §§ 441a(a)(1)(A); 431(8)(A).

17. The Act further prohibits any candidate or political committee from knowingly accepting any contribution or making any expenditure in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

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18. It is unlawful for any candidate, political committee, or any other person to knowingly accept or receive any contribution prohibited by 2 U.S.C. § 441b. 2 U.S.C. § 441b(a).

Fundraising Efforts by Showboat and Marina

19. In or about February 2000, Mr. Gormley contacted Mr. Wolfe and asked him to fundraise for the Committee at Showboat. Mr. Wolfe agreed to Mr. Gormley's request. During a weekly "executive meeting" at Showboat that Mr. Wolfe directed as General Manager of the casino, he requested that employees contribute to the Committee. Mr. Wolfe told employees that they could leave contributions to the Committee in Mr. Wolfe's office suite with his secretary at Showboat and that they would be forwarded to the Committee. Consequently, most employees who contributed delivered their contributions to Mr. Wolfe's secretary at Showboat, where she kept them in her desk after Mr. Wolfe told her to hold onto them.

20. Mr. Wolfe approached Mr. Jonas and asked him to fundraise for the Committee at Marina. Mr. Jonas agreed to Mr. Wolfe's request. Mr. Jonas and his supervisor sent a memorandum on Harrah's letterhead to "Management Team Members." The subject line of the memorandum says that it is for "Gormley for Senate Campaign," and the first paragraph states

As you know, State Senator Bill Gormley has been the leading advocate for the gaming industry at the state level for over the past ten years. He is currently running for the Republican candidacy for the U.S. Senate and has asked the gaming industry to contribute to his campaign. We both feel it is extremely important that we support Senator Gormley and would like each of you to consider making a donation to his campaign.

After reciting the Act's monetary limits on contributions, the memorandum ends

Checks should be made payable to "Gormley for Senate." We would like to hand deliver all the checks to Senator Gormley and are

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requesting that all checks be dropped off at Dave's office by
Wednesday, March 29, 2000. Any help would be greatly
appreciated.

At the bottom of the memorandum there is the notation "DJ:jm," indicating that Mr. Jonas' secretary typed the memorandum for him. After receiving the memorandum, employees who contributed to the Committee delivered their contributions to Mr. Jonas' office suite at Marina and left them with his secretary.

21. Thereafter, in March 2000, a Committee representative went to Mr. Jonas' and Mr. Wolfe's casino offices and picked up contribution checks that had been collected. The Committee reported that it deposited \$13,000 in contributions from 26 employees at Showboat and spouses of employees at Showboat on March 23, 2000, and 55 contributions totaling \$24,275 from employees and spouses of Marina on March 30, 2000.

22. Subsequently, Mr. Wolfe and Mr. Jonas each filed conduit reports with the Commission, as required by 11 C.F.R. § 110.6(c), indicating some of the contributions that they had collected for the Committee.

Fundraising Efforts by Mirage Resorts, Inc.

23. Mirage held a fundraiser for the Committee in Las Vegas, Nevada on February 9, 2000, in a private room at *Le Cirque*. Approximately 29 people, including Mr. Wynn and Ms. Mathur, attended the fundraiser.

24. Mr. Wynn previously had approached Gormley directly on behalf of Mirage and asked to host the fundraiser for the candidate. Mirage planned and organized the fundraiser, including reserving a location to hold the fundraiser, arranging for catering, sending invitations for people to attend, and soliciting contributions. Mirage also collected and forwarded contributions to the Committee.

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25. In-house legal counsel at Bellagio, Bruce Aguilera, wrote an invitation to attend the fundraiser, dated January 11, 2000. The invitation read

Mr. Wynn is hosting an event for William Gormley to support his candidacy for the United States Senate. The luncheon event will be held on February 9 at 11:30 a.m. in *Le Cirque*.

The contribution limits are \$2,000 per person. Therefore, a husband and wife can give a total of \$4,000. However, each spouse must sign the check if the contribution is from a joint account. This donation will cover the primary and general elections. Checks should be made payable to "Gormley for U.S. Senate" and can either be brought to the luncheon or mailed to Gormley for U.S. Senate at 401 New Road, Suite 103, Linwood, New Jersey 08221.

William Gormley is currently a New Jersey State Senator.

Please RSVP to my assistant, Sheryl, at [XXX-XXXX].

I am available to discuss if you have any questions.

Thank you.

26. A distribution list on the second page of the invitation listed seventeen top Mirage executives who received the invitation, including Stephen A. Wynn, CEO & Chairman of Mirage Resorts, Inc.; Elaine P. Wynn, Director; Richard D. Bronson, President of subsidiary New City Development; George J. Mason, Director; Ronald M. Popeil, Director; Daniel B. Wayson, Director; Melvin B. Wolzinger, Director; Frank Visconti, President of Retail Division; Bruce Levin, corporate counsel; Bobby Baldwin, President of subsidiary the Bellagio Hotel; Barry Shier, President of subsidiary Golden Nugget; Marc Schorr, President of Mirage; Bill McBeath, President of subsidiary Treasure Island; Bob Sheldon, Executive Vice President at subsidiary Golden Nugget; Kenny Wynn, President of the Architect and Design Group; Mark Juliano, President of subsidiary Atlantic City Project; and Al Faccinto, President of International Marketing. All of these individuals were in Mirage's restricted class at the time of the solicitation.

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27. Ms. Mathur also received a copy of the invitation. Ms. Mathur then had conversations about the fundraiser with other people, including several people outside of the restricted class and outside of the corporation, and invited them all to attend and contribute. Ms. Mathur then edited the invitation written by Mr. Aguilera and instructed her assistant, Andrea Bearden, to make the changes and fax the additional invitations as part of her work responsibilities on Mirage Resorts facsimile cover sheets to Jan Jones, Senior Vice President of Governmental Affairs at Harrah's Entertainment, Inc.; Delores Owens, a senior executive at Caesar's Palace; Mark Brown, a Senior Vice President at Station Casinos and the Trump Taj Majal; and Joe Brunini, an executive in International Marketing at Mirage.

28. Mirage also created an Excel fundraising chart listing people who it invited to the fundraiser, including several people who were outside of the corporation, and maintained it by keeping track of who planned to attend, who planned to contribute and how much, and whether contributions had already been mailed or collected by someone within Mirage. Ms. Mathur also instructed her assistant as part of her work responsibilities to confirm who would attend the fundraiser and how much they would contribute. The additional people outside of Mirage that were listed on the fundraising chart include Charles Mathewson, Chairman of International Game Technology, Inc., a vendor of Mirage; Don Synder, President of Boyd Gaming, a competitor of Mirage; Mark Tratos, an attorney at Quirk, Tratos & Roet; Judy Patterson, an Executive Vice President at the American Gaming Association; and Nick Casiello and John Groom, who both worked at Harrah's. Mirage invited at least 35 persons to attend the fundraiser and contribute to the Committee.

29. Ms. Mathur also instructed her assistant as part of her work responsibilities to work out a catering menu for the fundraiser. Her assistant then coordinated

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with the *Le Cirque* catering department per Ms. Mathur's instructions, and presented the proposed menu to Ms. Mathur, who approved it for the fundraiser. A private room at *Le Cirque* was also reserved to hold the fundraiser.

30. Ms. Mathur also instructed her assistant as part of her work responsibilities to get a contribution commitment from some non-attendees and to send a messenger from within Mirage's Government and Community Relations department to collect contribution checks.

31. Mr. Gormley, who had traveled from New Jersey to Las Vegas the day before to attend the fundraiser, did not collect any contributions at the fundraiser and the Committee did not bring any staff to the fundraiser to collect any contributions. Some fundraiser attendees brought contribution checks with them to the fundraiser, and some attendees also brought contribution checks from their spouses.

32. Mr. Wynn gave a speech at the fundraiser generally praising the candidate and emphasizing his importance to the gaming industry. Some of the attendees were invitees outside of the corporation.

33. Mirage collected the contributions at the fundraiser and indicated to the candidate that it would forward the contributions when it had received them all. Mirage received some of the contributions after the fundraiser, and there was a lag time between the fundraiser and when it sent them to the Committee. Some of the checks that Mirage forwarded to the Committee were dated weeks before the fundraiser (in January), while others were dated weeks after the fundraiser (in March). Mirage eventually collected and forwarded a total of \$28,000 in individual contributions to the Committee via Federal Express.

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34. The Committee returned one improper \$2,000 contribution check to a donor immediately after receiving it. The Committee then deposited the remaining \$26,000 worth of contributions on March 21, 2000 from persons associated with Mirage or this fundraiser. A note on the front of one deposit slip the Committee used, which listed a majority of the contribution checks from attendees of the Mirage fundraiser, stated, "These are all Steve Wynn's employees – signatures for designations will follow – WLG wants checks deposited."

35. The cost of the private room at *Le Cirque* used to hold the fundraiser was \$1,000. A receipt for the event given to the Committee shows that the fair market value of catering, with taxes and a 20% service charge, cost \$1,718.51. Thus, the total cost of the fundraiser (room rental plus catering) was \$2,718.51. The Committee did not pay Mirage or *Le Cirque* in advance for the costs of the fundraiser. Mirage then provided the Committee with a \$1,000 discount on the fair market value for the food served at the fundraiser pursuant to 11 C.F.R. §§ 100.7(b)(7); 114.1(a)(2)(v). The Committee sent a check to the Bellagio for "event costs" of \$1,718.51 on February 17, 2000.

In-Kind Contributions and Reporting Violations

36. On October 28, 1999, Mr. Jingoli made a \$1,000 contribution to the Committee for use in the 2000 primary election, and a \$1,000 contribution to the Committee for use in the 2000 general election. Thereafter the Committee could not receive any additional lawful contributions from Mr. Jingoli under 2 U.S.C. § 441a(f).

37. Mr. Jingoli, having learned of a fundraiser to be held for the Committee at *Le Cirque* in the Bellagio, decided to purchase airline tickets for Mr. Gormley, himself, and a colleague to attend the fundraiser.

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38. On February 4, 2000, Mr. Jingoli used his personal credit card to purchase the three First Class airline tickets for travel on February 8, 2000 from Philadelphia, PA to Las Vegas, NV. At the airport, Mr. Jingoli downgraded the three First Class tickets in exchange for three Coach/Economy Class tickets. The cost of the airline tickets and related fees was now \$723 per person.

39. On February 8, 2000, Mr. Jingoli met a group of colleagues and friends associated with the campaign at the airport who had decided to go the Las Vegas fundraiser. This group included Mr. Gormley and several others, who traveled in the same airplane to Las Vegas.

40. After arriving in Las Vegas, Mr. Jingoli attended the fundraiser at *Le Cirque* for Mr. Gormley. Mr. Gormley also attended the fundraiser and gave a speech. Mr. Jingoli did not conduct any business on the trip and did not request or receive any reimbursement for any expenses from Jingoli & Sons, Inc.

41. Mr. Jingoli failed to seek reimbursement for the cost of the candidate's airline ticket. Nor did the Committee ever reimburse Mr. Jingoli for the cost of the candidate's airline ticket or report the cost of this ticket as an in-kind contribution.

42. Because Mr. Jingoli traveled to the fundraiser merely as a contributor, the cost he incurred in purchasing his own plane ticket and that of his colleague, who was unassociated with the Committee, does not constitute an in-kind contribution to the Committee. Moreover, pursuant to 2 U.S.C. § 431(8)(B)(iv), Mr. Jingoli was entitled to exempt up to \$1,000 of those travel expenses made on behalf of the Committee. However, Mr. Jingoli's purchase of a airline ticket for the candidate, valued at \$723, constitutes an in-kind contribution to the Committee.

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43. Mr. Gormley also used a personal credit card and charged \$220.34 for a hotel room at Mirage while attending the fundraiser, which the Committee did not report as an in-kind contribution from the candidate.

44. Respondents fully disclosed all contributions at issue in this matter which were received in connection with the solicitations by third parties.

45. Respondents contend that the violations were inadvertent, reflect misunderstandings of the Act or good faith errors. The Commission has made no findings that the violations in this matter were knowing and willful.

46. The Commission has made no findings in this matter against William L. Gormley.

Violations

V. Respondents Gormley for Senate Primary Election Fund and Alan C. Staller, as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a) by accepting an excessive in-kind contribution from Mr. Jingoli, by failing to report the in-kind contributions by Mr. Jingoli and Mr. Gormley, by knowingly accepting contributions facilitated by officers of Showboat and Marina and by knowingly accepting contributions facilitated by Mirage Resorts, Inc. Respondents will cease and desist from violating 2 U.S.C. §§ 434(b), 441a(f), and 441b(a).

Civil Penalty

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Twenty-Two Thousand dollars (\$22,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

Other Provisions

VII. Respondent shall have no more than thirty days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement.

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VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.

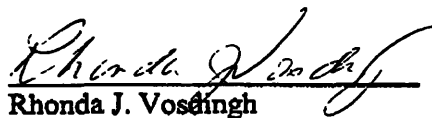
§ 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence H. Norton
General Counsel

BY:


Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

2/22/05
Date

FOR THE RESPONDENT:


Cleta Mitchell, Esq.
Counsel to Gormley for Senate Primary
Election Fund and Alan C. Staller, as treasurer

Feb 3, 2005
Date

25.04.410.1756